

**UNITED STATES GOVERNMENT  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 16**

Amarillo, Texas

COBB MECHANICAL CONTRACTORS, INC.<sup>1</sup>

Employer

and

Case No. 16-RC-10118

UNITED ASSOCIATION OF JOURNEYMEN  
AND APPRENTICES OF THE PLUMBING  
AND PIPEFITTING INDUSTRY OF THE  
UNITED STATES AND CANADA, LOCAL  
UNION 196, AFL-CIO

Petitioner

**DECISION AND ORDER**

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, herein referred to as the Act, a hearing was held before a hearing officer of the National Labor Relations Board, herein referred to as the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding, the undersigned finds:<sup>2</sup>

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

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<sup>1</sup> The Employer's name appears as amended at the hearing.

<sup>2</sup> The Employer and the Petitioner filed briefs and the Petitioner filed a supplemental brief which were duly considered.

2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein. The parties stipulated, and I find, that Cobb Mechanical Contractors, Inc. is a Colorado corporation engaged in the business of mechanical contracting. During the past 12 months, a representative period, the Employer derived gross revenues in excess of \$500,000. During this same period, the Employer purchased and received at its Amarillo, Texas jobsite goods and materials valued in excess of \$50,000 directly from points located outside the State of Texas.

3. The labor organization involved claims to represent certain employees of the Employer. The parties stipulated, and I find, that the Petitioner is a labor organization within the meaning of Section 2(5) of the Act.

4. A question affecting commerce does not exist concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

The Employer is engaged as a contractor in the plumbing and mechanical industry. The Employer is headquartered in Colorado Springs, Colorado and it has jobsites in other states, including Texas. The only jobsite involved in these proceedings is the Texas Department of Criminal Justice's High Security Facility located in Amarillo, Texas, also known as the "Clements Unit". The Employer, pursuant to a subcontract with Lew Lewis Construction, Inc., the general contractor for the project, is responsible for the complete installation of all designed and specified plumbing and mechanical systems at the Clements Unit jobsite. This includes the installation of fixtures, shower drains, commodes, waste and medical piping, boilers, chillers, and HVAC piping and

equipment. As of July 7, 1999, the Employer employed a general superintendent, seven journeymen plumbers, two welder/pipefitters, and five apprentices and/or helpers at the jobsite. The Employer also intends to hire three journeymen plumbers and one welder/pipefitter subject to their passing a drug screen and physical. Don Graski is the Employer's General Superintendent. All of the Employer's apprentices, journeymen, welders/piperfitters and helpers report to Graski. Three of the journeymen plumbers are classified as working foremen.

Petitioner seeks to represent all plumbers and pipefitters, including apprentices, journeymen, and helpers, working for the Employer at the Clements Unit jobsite. The Petitioner, however, does not seek to represent journeymen plumbers classified as working foremen because the Petitioner contends these employees are supervisors as defined by Section 2(11) of the Act. The Employer contends there would be no useful purpose served by directing an election in this matter based on the imminent cessation of its Clements Unit project on August 7, 1999, and requests that the petition be dismissed. In the alternative, if an election is directed, the Employer contends that its working foremen are not supervisors as defined by Section 2(11) of the Act and thus should be included in any unit found appropriate herein.

**Imminent Cessation of the Employer's Clements Unit project**

The record reveals the Employer began work on the Clements Unit project on September 29, 1998. The Clements Unit project encompasses an administration building, a kitchen, a mechanical room, two multi-floored wings with five cellblocks on each wing and about 660 bed units. Pursuant to Article 3.1 of the above-referenced subcontract, the Employer has until August 7, 1999 to complete its plumbing and mechanical work. The

Employer has no control over the completion or scheduling of work performed by the other subcontractors present at the jobsite.

The record reflects that as of July 7, 1999, the Employer has six weeks of work left on the project and that approximately between 50% and 60% of the project has been completed. The Employer has not requested an extension of time to complete its work, nor agreed to any alterations, modifications or amendments regarding subcontract completion dates or job specifications. Likewise, the record reflects that the general contractor has granted no extensions of time on the subcontract and no change orders have been received by the Employer at the jobsite. Additionally, Article 3.8 of the subcontract specifies that the Employer will be penalized \$3,500 per day in liquidated damages for each day beyond the completion date it takes the Employer to finish the project. The record also reflects that the general contractor may pursue a cause of action against the Employer if it does not meet the specified completion date.

The Employer contends that while there are some delays associated with some of its critical path items, the project will be completed as scheduled on August 7, 1999. The critical path is a schedule of work activities or dates for a project that are deemed to be critical to the completion of the job. These schedules can include early start, early finish, late start and late finish dates. The record reflects that the Employer has only met some of the early start dates but has met all of its late start dates. Regarding late start dates, the record further reflects that the Employer is ahead of schedule for installing piping and fixtures in the cellblocks and is still on schedule for installing boilers and chillers in the mechanical room.

The record also reflects that between 50% and 40% percent of the fixtures have been installed by the Employer and that over 50% percent of the plumbing work has been completed. The record further reflects that all waste and vent work and copper risers have been roughed in and tested on the first and second floors of the cellblocks and all underground waste and vent work has been completed. The Employer asserts that it is currently working on the third level of the cellblocks and has already begun installing overhead pipe in the mechanical room. The Employer also asserts all that is needed to complete the project is the HVAC piping and additional unspecified work on the administration building.

Aside from its efforts to complete the Clements Unit project, the work performed by the Employer in the twenty-six county Amarillo Panhandle area has been limited to plumbing installation for prison construction projects and the record reflects that it has successfully bid on five prison projects in this geographic area since 1993. Specifically, the record reflects the Employer performed work on prison projects in Pampa, Dalhart, and Amarillo, Texas in 1994 and 1995 and has been performing work on its current Clements Unit project since the Fall 1998. Regarding future projects, the record reflects the Employer has no outstanding bids for any new projects in the Amarillo Panhandle area and is not aware of any projects it intends to bid upon in this geographical area. The record does reflect that the Employer has applied and is pursuing bids for other projects in Texas (outside the above-referenced geographical area). The Employer maintains it has no interest in remaining in the Amarillo Panhandle area if no prison work is available for which it can bid.

Regarding project staffing, the Employer asserts it attempts to utilize current employees, but primarily hires local employees on an “as needed” basis for each job. The record reflects that the general superintendent and the three working foremen are the only employees of the Employer who have previously moved from jobsite to jobsite in the Amarillo Panhandle area. The Employer does not maintain a list of prior employees who have worked on previous jobs. For the Clements Unit project, the record reflects that the Employer is in the process of hiring six new employees.

It is well established that if an employer’s project is scheduled to wholly terminate within a relatively short period of time from the date of the representation hearing, the Board has found no useful purpose would be served by directing an election. The Board has specifically held that where an employer’s operations are scheduled to terminate within 3-4 months, no useful purpose is served by directing an election. *Davey McKee Corporation*, 308 NLRB 839 (1992); *M.B. Kahn Construction Co.*, 210 NLRB 1050 (1950); *Todd-Galveston Dry Docks*, 54 NLRB 625 (1944); *Fraser-Brace Engineering Co.*, 38 NLRB 1263 (1942); *Fruco Construction Co.*, 38 NLRB 991 (1942). The representation hearing in the instant matter was held on June 16 and July 7, 1999, less than two months from the date the Employer’s project is scheduled for completion.

Notwithstanding the Employer’s contention that it will complete the project on August 7, 1999, the Petitioner maintains the Employer will not complete the project by this date. In support of its contention, the Petitioner relies on record evidence reflecting there is work associated with other subcontractors that has not yet been completed, including the erection of the steel walls the Employer needs for commode installation.

The record does not reflect, however, how many steel walls are required to be erected for the project or how many steel walls still need to be erected. Likewise, the record is void of any evidence regarding the start dates or the completion schedules for the steelwork or any other work to be performed by any of the other subcontractors present at the Employer's jobsite.

The Petitioner also relies on record evidence demonstrating there are immediate project job tasks not yet fully completed by the Employer. Such outstanding tasks include completing the piping for all fixtures, installing all medical and waste piping, installing all of the boilers and chillers in the mechanical room, and completing water connections to all of the commodes and fixtures. There is no record evidence, however, regarding the start dates or completion schedules for any of these outstanding tasks. Although the record reflects these tasks have yet to be completed, there is no record evidence to establish the Clements Unit project will not be completed or substantially completed in time or that the Employer will be substantially delayed as a result of these uncompleted tasks.

In its brief, Petitioner seeks to distinguish *Davey McKee* from the instant matter and instead relies on the holding in *Fish Engineering*, 308 NLRB 836 (1992), to support its contention that a useful purpose will be served by directing an election in the petitioned-for unit. The Union's reliance on *Fish Engineering*, as it applies to this matter, however, is misplaced. First, in *Fish Engineering*, the evidence demonstrated that the employer had bid on future work with its current contractor. Such evidence is not reflected in the record in the instant matter. To the contrary, the record reflects that the employer has not bid, nor has any intentions of bidding, on future projects in the

geographic area encompassed by the petitioned-for unit. Moreover, the record shows that the Employer has no intention of remaining in the Amarillo Panhandle area if it has no prison work to bid upon. Hence, unlike the employees in ***Fish Engineering***, the record evidence in the instant matter does not establish that employees have a reasonable expectation for future employment with the Employer, particularly when there are no future projects being sought by the Employer.

Second, the employer in ***Fish Engineering*** had two ongoing projects within the geographic area at the time the petition was filed. In the instant case, the record reveals that the only ongoing project the Employer has pending within the geographic location is the Clements Unit project. As discussed above, the evidence shows this project is scheduled to end on or about August 7, 1999. Third, although the evidence in both ***Fish Engineering*** and the instant matter reflect both employers with a history of working on projects in their respective geographic areas, the evidence revealed the employer in ***Fish Engineering*** worked on four projects within the prior year of the petition being filed, whereas the record evidence in the instant matter shows the Employer has not worked on other prison projects within its respective geographic area since 1995. Accordingly, the facts in this case are distinguishable from those in ***Fish Engineering***.

Finally, in it brief, Petitioner asserts that Employer management representatives such as General Superintendent Graski have informed employees that the Clements Unit project would continue until Thanksgiving or the first of the year. Even assuming *arguendo* that such statements were made by the Employer, it does not detract from the fact that the project will be completed within the 3-4 month time period described in ***Davey McKee***. Likewise, such speculative statements alone, if made, do not overcome



the record evidence detailing the project's scheduled completion date and the evidence that there is no intention by the Employer to remain in the geographic location without additional prison project work. Moreover, such statements, without more, fail to establish whether the project will or will not be completed or substantially completed by the contracted completion date.

Based upon the foregoing, I find that a preponderance of the record evidence establishes that the Employer's Clements Unit project will be completed or substantially completed by August 7, 1999. *Davey McKee Corporation*, 308 NLRB at 839-840. Without evidence demonstrating that the Employer has not met or will not meet any of its critical path schedules for the various project tasks, the mere assertion that the Employer's current uncompleted work will result in it not completing the project on schedule is speculative at best. The record reveals that the Employer has economic incentive to finish the project by the completion date because it will be subject to liquidated damages and potential liability if it fails to do so. Moreover, the record is void of any evidence showing the Employer has any other ongoing projects within the geographical scope of the unit or that it has bid or has any expectations to bid for such work with its current contractor or that its employees will not be terminated upon the cessation of the Clements Unit project. *See, e.g., Fish Engineering & Construction*, 308 NLRB 836 (1992).

Accordingly, I conclude that it would serve no useful purpose to conduct an election at this time and I shall dismiss the petition on that basis. *Davey McKee Corporation*, 308 NLRB at 840. If the petitioned-for unit remains in existence for a substantially longer period of time than is now anticipated or should the Employer secure

a contract for a new project within the geographical scope of the petitioned-for unit, the Petitioner may move to reinstate the petition.

**Supervisory Status of Working Foremen**

Based on my determination that there would be no useful purpose in directing an election for the unit proposed by the Petitioner, I need not and shall not make a determination as to the supervisory status of the Employer's working foremen.

**ORDER**

**IT IS HEREBY ORDERED** that the petition filed herein be, and hereby is, dismissed.

**RIGHT TO REQUEST REVIEW**

Under the provision of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, DC 20570. This request must be received by the Board in Washington by July 30, 1999.

**DATED** July 16, 1999, at Fort Worth, Texas.

/s/ Claude L. Witherspoon  
Claude L. Witherspoon, Acting Regional Director  
NLRB Region 16  
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347-8020-8050 (Cessation of Employer's Operations)